

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ELAINE ARMSTEAD )  
v. Plaintiff, ) CIVIL ACTION FILE  
ALLSTATE PROPERTY & CASUALTY ) NO. 1:14-CV-586-WSD  
INSURANCE COMPANY ) ATLANTA, GEORGIA  
Defendant. )  
\_\_\_\_\_  
)

EXCERPT OF PROCEEDINGS  
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,  
UNITED STATES DISTRICT JUDGE, AND A JURY

## **GRANTING OF MISTRIAL**

Wednesday, July 13, 2016

**APPEARANCES OF COUNSEL:**

For the Plaintiff: THE RUSSELL'S LAW FIRM PLC  
(By: Sandra Lee Finch)

For the Defendant: WEBB ZSCHUNKE NEARY & DIKEMAN LLP  
(By: Marvin Dewayne Dikeman  
Melissa Cordell Patton)

*Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by*  
NICHOLAS A. MARRONE, RMR, CRR  
1714 U. S. Courthouse  
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## Wednesday Morning Session

July 13, 2016

9:31 a.m.

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## PROCEDING S

— — — — —

(In open court without a jury present:)

THE COURT: Good morning. I understand there is something --

10 MS. FINCH: Your Honor, I have a request for a  
11 curative instruction to the jury.

12 Yesterday when Mr. Fredrics was on the stand  
13 testifying about the reserves, you questioned him about the  
14 reserves.

15 And I'm not sure if Your Honor is aware of it or  
16 not -- obviously, you can't see your face -- but you had a  
17 very questioning face, like you didn't believe him. And it  
18 was very obvious, I think.

19 And I feel like that has prejudiced our case.  
20 I feel like --

21 THE COURT: I'm happy to do that. I'm happy to do  
22 that if you think that's prejudiced your case.

23 MS. FINCH: Thank you.

THE COURT: I will do that when they come in.

25 MS. FINCH: Thank you.

1                   As well as I think the Court has been expressing  
2 similar facial features towards me throughout the trial, and  
3 I am concerned that the jury thinks that I'm doing everything  
4 wrong.

5                   And so whatever instruction you give, I would  
6 like it to include something along those lines as well,  
7 please.

8                   THE COURT: So what do you specifically suggest?

9                   MS. FINCH: That -- I mean, I don't know. There is  
10 curative instructions for this, something along the lines of  
11 that the jury shouldn't construe the Court's demeanor or the  
12 Court's -- as credibility determination or anything like  
13 that, or negative -- to conclude something negative about  
14 attorney's counsel -- or plaintiff's counsel.

15                  Just a curative instruction. I imagine Your Honor  
16 has given it before.

17                  THE COURT: Never. I never had that request.

18                  I will think of something. Anything else?

19                  MS. FINCH: No.

20                  THE COURT: All right. We will be in recess.

21                  MR. DIKEMAN: Your Honor, pardon, if I may?

22                  If we are going to try to do a curative  
23 instruction, things like crying at the podium and things like  
24 that, I don't know how to address all of that that really --  
25 I don't know what impact it has on a jury, if any.

1           But if we are going to do that, let's try to  
2 address things like that also.

3           MS. FINCH: I agree with that, Your Honor. But --  
4 I mean, that's part of it, that's part of the immense  
5 pressure that's being put on me throughout this trial in how  
6 I've been treated. I mean, I'm --

7           THE COURT: Ms. Finch, I understand that you have  
8 an opinion that you have been unfairly treated in my  
9 performance of my duties to ensure --

10          MS. FINCH: Your Honor --

11          THE COURT: Excuse me.

12          MS. FINCH: -- everybody that sat in this courtroom  
13 saw it and approached me afterwards and wanted to know what  
14 was going on in this courtroom. So it's not just me that  
15 sees it.

16          THE COURT: I understand your position and  
17 I understand wherever you might have gotten support for what  
18 you perceive has happened.

19          My responsibility is to make rulings in a very hard  
20 case where rulings are unusually difficult, and I have done  
21 the best job I can.

22          The jury will have the opportunity not just to  
23 judge me and my fairness, but they will have a chance to  
24 judge your performance. That's part of what always goes on  
25 in a case, and that's what jurors always tell me when I talk

1 to them afterwards.

2 So there is no way to -- there is no way to make  
3 you feel as if you haven't been treated differently except  
4 the record, and the record will reflect that.

5 If you think there is an appellate issue based upon  
6 my conduct or if you think there is an issue based upon the  
7 manner in which I have presided over this that requires me to  
8 be subject to discipline which might have an effect on your  
9 appeal rights, you are welcome to do that.

10 There are avenues that we provide to litigants and  
11 to lawyers that feel as if they have not been dealt with  
12 fairly in a trial. But that will be based on the record.

13 MS. FINCH: Your Honor, I think comments like you  
14 don't know how to read --

15 THE COURT: I didn't do that in front of the jury.

16 MS. FINCH: You didn't do it in front of the jury,  
17 but those are the kinds of comments that you -- I don't know,  
18 this is the third -- this trial and two pretrial -- one  
19 pretrial conference and then the last trial, I appeared in  
20 front of you three times.

21 The first time you were condescending to me, not  
22 nice to me. I had never been in front of you before. I had  
23 never had any experience, past experience with you before. I  
24 don't know what the problem is, but it has been since the  
25 very first moment that I met you.

1                   And I don't know if you have a relationship with  
2 Mr. Dikeman. I know he's in federal court a lot. I don't  
3 know what the issue is.

4                   THE COURT: You know, you have got to quit guessing  
5 and speculating. I have had one case with Mr. Dikeman, that  
6 he lost.

7                   MS. FINCH: Well, I would just appreciate if we  
8 could move forward on a different tenor.

9                   I feel attacked. I feel like I'm attacked by you.  
10 And I'm just being honest with the Court, this has been a  
11 very difficult situation.

12                  I'm in here all by myself. I don't have opposing  
13 counsel -- I have no one in here to assist me, and it has  
14 been overwhelming at times. And I'm just -- I would  
15 appreciate it if we could move forward with a little bit more  
16 of a professional courtesy.

17                  THE COURT: Are you saying I've been  
18 unprofessional?

19                  MS. FINCH: I do believe that.

20                  THE COURT: You know, that's contemptuous, but I'm  
21 not going to sanction you for that.

22                  MR. DIKEMAN: Your Honor, simply for the record,  
23 I do not want our silence to be taken as acquiescence to any  
24 point Ms. Finch has made.

25                  THE COURT: Well, if you want to put on the record

1 your impressions, you should do that.

2                   MR. DIKEMAN: Your Honor, I would like to put on  
3 the record, my concern in this case is that the Court has  
4 been charged with working overtime simply to address what  
5 I consider to be as a trial lawyer very fundamental issues of  
6 trying a case in the presence of a jury, such that my concern  
7 as I drove to court this morning is that Ms. Finch has been  
8 subject to what I think are correct rulings by this Court  
9 about fundamental, easy issues.

10                  My concern, however, is that with the crying at the  
11 podium and things of that nature and comments that are being  
12 made, that one or more of the jurors may, in fact, come away  
13 with the impression that they should feel sorry for her and  
14 that they might be motivated by sympathy or they might be  
15 motivated by the thought that Allstate is somehow hiding  
16 evidence or somehow pressing this case in such a fashion to  
17 hide the truth from them. That is my concern about the way  
18 this case has gone.

19                  I will tell you what I have told my law partners:  
20 This case has made me embarrassed for my profession.

21                  I cannot fathom interacting with a judge at  
22 any level in what I consider to be a disrespectful way.  
23 I would quit the practice of law before I ever felt it  
24 necessary to respond to a judge as I have seen you be  
25 responded to.

1           There have been rulings in this case and in  
2 other cases that I have profoundly and without question  
3 disagreed with, but I understand a judge is attempting to  
4 do his best job or her best job to get it right.

5           Me saying things like that's ludicrous or  
6 that's ridiculous or smiling at rulings or things of  
7 that nature have no place in what I consider to be a  
8 very, very special environment, a federal courtroom, where  
9 jurors are called upon essentially for free to deal with  
10 our problems.

11           Those are my thoughts.

12           THE COURT: Do you want a mistrial?

13           MS. FINCH: No, Your Honor, I do not.

14           THE COURT: Excuse me, I'm asking -- sit down.

15           MS. FINCH: Oh, I thought you were asking me.

16           THE COURT: No. He's standing up. I looked at  
17 him.

18           MR. DIKEMAN: May I have a moment to confer about  
19 that, Your Honor?

20           THE COURT: You may.

21           MR. DIKEMAN: May we step --

22           THE COURT: You may. We will take a five-minute  
23 recess.

24           (A recess is taken at 9:12 a.m.)

25                                --    --    --

1                             (In open court without a jury present at  
2                             9:20 a.m.:)

3                             MR. DIKEMAN: Your Honor, thank you for that time  
4                             to consult.

5                             Allstate does move for a mistrial. I feel --

6                             THE COURT: Does what?

7                             MR. DIKEMAN: Does move for a mistrial.

8                             I feel that given how this case has transpired and  
9                             the events that I related just a moment before the break, it  
10                            would be not in the interest of my client to take a chance  
11                            that this sympathy and disrespect and things of that nature  
12                            could color this verdict in this case, which I am concerned  
13                            it will.

14                            THE COURT: Ms. Finch?

15                            MS. FINCH: Your Honor, I would be -- I honestly  
16                            don't know. Because, I mean, on one hand I feel like -- I  
17                            don't know how the jury is reacting to all of this.

18                            THE COURT: Well, you believe that they are  
19                            reacting poorly because you have asked for a curative  
20                            instruction.

21                            MS. FINCH: Well, no, I don't know that. I just  
22                            know that people have approached me in the hallway that were  
23                            observing --

24                            THE COURT: Who has -- who has approached you?

25                            MS. FINCH: A couple of lawyers that were sitting

1 in the seats out here.

2 THE COURT: And who were they?

3 MS. FINCH: Mr. Remington and Mr. Bush.

4 THE COURT: What firm are they from?

5 MS. FINCH: The Remington -- I think it's the Bush  
6 Firm, and their witnesses -- or not witnesses, whoever was  
7 with them. But people approached me.

8 And so it's not that -- the thing is that I don't  
9 have any more cases left here in Arizona -- or Georgia.  
10 I have moved to Arizona. I have tried to honor my commitment  
11 to my client.

12 This case is not worth that much money. I would  
13 rather try it to verdict, whatever the verdict is. I just  
14 would appreciate a fair trial and a fair opportunity to  
15 present my client's case without an appearance by the judge  
16 that you are against us and that you hate us and that we are  
17 doing everything wrong. And that's the impression that's  
18 coming across.

19 And I am sorry that I am a terrible lawyer, I mean,  
20 in the Court's opinion, but I am doing the best that I can.  
21 And I feel like the Court has been unfair.

22 I don't know that a mistrial -- I mean, we are  
23 going to have to come back and do it again. And unless the  
24 Court is going to treat me differently in another trial, we  
25 are just going to repeat the same thing all over again. So I

1 don't know much good it's going to do to try it again.

2 THE COURT: I think based even on these last  
3 comments and the fact that you have moved twice for a  
4 mistrial and that your complaint all along has been that you  
5 have not been treated fairly, I think today you went back to  
6 the very first time we met, and therefore you must have a  
7 firm belief, one, that you have been -- I disagree with  
8 that -- and, secondly, you have now stated three times this  
9 morning and two times before this that the jury has seen you  
10 be treated unfairly and you have claimed prejudice three  
11 times.

12 I do believe that a complicating factor is that  
13 having not been able to maintain your composure and breaking  
14 down in tears makes it -- adds an element to the jury  
15 because they -- I know they saw that, and that that, in fact,  
16 may well impact their ability to fairly and objectively  
17 consider the facts of the case.

18 And based upon your request and your belief that  
19 you haven't been treated fairly, and, frankly, my belief that  
20 you have been disrespectful to the Court on numerous  
21 occasions, that I am going to grant the mistrial, and we will  
22 reschedule the case for trial.

23 And I will reschedule the hearing that I had told  
24 you that I would conduct.

25 So the motion for mistrial is granted, and the case

is concluded.

And I am going to go back and talk to the jurors and thank them for their service. There is no reason to bring them out here to do that now that the case has been mistried.

(Proceedings adjourn at 9:24 a.m.)

1                   C E R T I F I C A T E  
23           UNITED STATES OF AMERICA         :  
4    :  
4           NORTHERN DISTRICT OF GEORGIA    :  
56                   I, Nicholas A. Marrone, RMR, CRR, Official Court  
7                   Reporter of the United States District Court for the Northern  
8                   District of Georgia, do hereby certify that the foregoing 12  
9                   pages constitute a true transcript of proceedings had before  
10                  the said Court, held in the city of Atlanta, Georgia, in the  
11                  matter therein stated.12                  In testimony whereof, I hereunto set my hand on  
13                  this, the 13th day of July, 2016.  
1415  
16                  /s/ *Nicholas A. Marrone*  
17                  

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18                  NICHOLAS A. MARRONE, RMR, CRR  
19                  Registered Merit Reporter  
20                  Certified Realtime Reporter  
21                  Official Court Reporter  
22                  Northern District of Georgia  
23  
24  
25